

ENTERED

August 31, 2020

David J. Bradley, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

| | | |
|------------------|---|------------------------|
| FEDERAL HOME | § | CIVIL ACTION NO. |
| LOAN MORTGAGE | § | 4:20-cv-02023 |
| CORPORATION, | § | |
| Plaintiff, | § | |
| | § | |
| vs. | § | JUDGE CHARLES ESKRIDGE |
| | § | |
| ALYSSA MARIA | § | |
| SERRANO and BILL | § | |
| JEFFREY SERRANO, | § | |
| Defendants. | § | |

OPINION AND ORDER OF REMAND

Plaintiff Federal Home Loan Mortgage Corporation commenced this action in June 2018 in the 152nd Judicial District Court of Harris County, Texas. It then removed its own action to this Court in June 2020 after two years of litigation, citing 12 USC § 1452(f) in support. Dkt 1. This removal occurred after FHLMC had lost a no-evidence motion for summary judgment in February 2020 before the state trial court, although proceedings there were not concluded.

Defendants Alyssa Maria and Bill Jeffrey Serrano sought remand. Dkt 6. FHLMC opposed the motion. Dkt 11. It maintained that opposition through hearing before this Court. See Minute Entry, August 19, 2020. But FHLMC now withdraws its opposition and stipulates that it agrees to remand. Dkt 18.

The motion by the Serranos to remand is GRANTED. Dkt 6.

The Serranos also sought sanctions as against FHLMC for frivolous and harassing removal. Dkt 9. The Fifth Circuit hasn't addressed the propriety of FHLMC's removal as plaintiff under 12 USC § 1452(f). It is a fairly unique statute, and lower court authority is divided on the issue. Some have remanded on finding removal improper when FHLMC is the plaintiff who originally

chose the state forum. For instance, see *Federal Home Loan Mortgage Corp v Amersey*, 2014 WL 1400086 (ED Mich); *Federal Home Loan Mortgage Corp v Shaffer*, 72 F Supp 3d 1265 (ND Ala 2014); *Federal Home Loan Mortgage Corp v Litano*, 2015 WL 3632334 (D Mass); *Owen Loan Servicing, LLC v Mickna*, 2015 WL 685262 (WD Ark). Others have found the text to clearly provide for the contrary conclusion. For instance, see *Matter of Trusts established under the Pooling and Service Agreements*, 241 F Supp 3d 905 (D Minn 2017); *Federal Home Loan Mortgage Corp v Brooks*, 2011 WL 2619132 (MD Ala).

Sanctions are inappropriate given this division of authority. FHLMC has also resolved the objection to removal in this situation by agreeing to remand. This, too, counsels against imposition of sanctions.

The motion by the Serranos for sanctions is DENIED. Dkt 9.

This case is REMANDED to the 152nd Judicial District Court of Harris County, Texas.

The Clerk of the Court must provide a copy of this Order to the District Clerk for Harris County, Texas.

Should FHLMC again seek removal from state court, it must designate that removal as a *related case* to the instant action for assignment to this Court.

SO ORDERED.

Signed on August 31, 2020, 2020, at Houston, Texas.


Hon. Charles Eskridge
United States District Judge